

HOUSE No. 1872

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the workers' compensation system..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 8 of chapter 152 of the General Laws as appearing in the 2002
2 Official Edition, is hereby amended by striking the text in clause (d) of subsection (2) and
3 inserting in its place the following:-- "the insurer has possession of (i) a medical report from the
4 treating physician, the report indicates that the employee is capable of return to the job held at
5 the time of injury, or other suitable job pursuant to section thirty-five D consistent with the
6 employee's physical and mental condition as reported by said physician and (ii) a written report
7 from the person employing said employee at the time of the injury indicating that such a suitable
8 job is open and has been made available, and remains open to the employee; provided, however,
9 that if due, compensation shall be paid under section thirty-five; provided, further, that if such
10 employee accepts said employment subsequent to a modification or termination pursuant to this
11 paragraph, compensation shall be reinstated at the prior rate if the employee should cease work
12 in accordance with paragraph (c) of this section or should be terminated by the employer because
13 of the employee's physical or mental incapacity to perform the duties required by the job;"

14 SECTION 2. Section 8 of chapter 152 of the General Laws, as so appearing, is hereby
15 amended by striking out the text in subsection (4) and inserting in its place the following:--

16 "An insurer who makes prompt payment of benefits pursuant to section seven and
17 continues payment for one hundred eighty days or more, without contesting liability, may, no
18 sooner than sixty days following a referral to the industrial accident board of a complaint for
19 termination or reduction of benefits under section thirty-four, thirty-four A or thirty-five, if no
20 conference order has been issued during such sixty day period, request the administrative judge
21 to which the case has been assigned to appoint an impartial physician to examine the employee.
22 The administrative judge may, within thirty days of the request for an impartial examination,
23 appoint a physician from the appropriate roster to conduct an examination of the employee and
24 make a report within fourteen days. If such report contains clear and convincing evidence of
25 increased capability to work, the insurer may, with the administrative judge's consent, reduce or
26 terminate benefits in accordance with such report. In such instances, if the requirements of this
27 subsection have been complied with, when an order is issued on the insurer's complaint, if such
28 order requires that retroactive weekly benefits are due the employee, an additional payment equal
29 to two times the average weekly wage in the commonwealth shall also be paid to the employer.

30 At any time subsequent to the filing of a claim or complaint solely regarding the
31 reasonableness or necessity of a particular course of medical treatment, any party to such claim
32 or complaint may request the senior judge to appoint a physician from the appropriate roster to
33 conduct an examination of the employee and make a report within fourteen days. If the senior
34 judge determines that said claim or complaint involves only the issue of reasonable and
35 necessary medical treatment, he shall make such appointment within seven days. The impartial
36 physician shall determine the appropriateness of any medical treatment claimed or denied by the

37 parties, using any guidelines adopted by the health care services board or promulgated by the
38 department, if applicable. The determination by the impartial physician shall be some evidence
39 of the appropriateness or inappropriateness of the course of medical treatment in question at any
40 hearing at which such treatment is at issue. The parties shall have the right to submit other
41 medical evidence of the appropriateness or inappropriateness of the disputed medical treatment."

42 SECTION 3. Section 11A of chapter 152 of the General Laws, as appearing in the 2002
43 Official Edition, is hereby amended by striking the text in subsection (2) and inserting in its
44 place the following:--

45 "When any claim or complaint involving a dispute over medical issues is the subject of
46 an appeal of a conference order pursuant to section ten A, the administrative judge may appoint
47 an impartial medical examiner from the roster to examine the employee examiner from the
48 roster. Any party who files such appeal shall also submit the fee set by the commissioner for the
49 provision of an impartial medical report within ten days of filing said appeal; provided, however,
50 that where more than one party appeals, the fee shall be divided equally among all appealing
51 parties; provided, further, that such amount paid by a claimant shall be refunded by the insurer to
52 any claimant who prevails at hearing.

53 The impartial medical examiner, so appointed, shall examine the employee and make a
54 report at least one week prior to the beginning of the hearing, which shall be sent to each party.
55 No hearing shall be commenced sooner than one week after such report has been received by the
56 parties. The report of the impartial medical examiner shall, where feasible, contain a
57 determination of the following: (i) whether or not a disability exists, (ii) whether or not any such
58 disability is total or partial and permanent or temporary in nature, and (iii) whether or not within

59 a reasonable degree of medical certainty any such disability has as its major or predominant
60 contributing cause a personal injury arising out of and in the course of the employee's
61 employment. Such report shall also indicate the examiner's opinion as to whether or not a
62 medical end result has been reached and what permanent impairments or losses of function have
63 been discovered, if any. Such impartial physician's report shall constitute evidence of the
64 matters contained therein.

65 Failure of an employee to report to an impartial medical examiner agreed upon or
66 appointed under this section or section eight, after due notice and without cause, and failure to
67 submit to such examiner all relevant medical records, medical reports, medical histories, and any
68 other relevant information requested without good reason, shall constitute sufficient cause for
69 suspension of benefits pursuant to section forty-five. The report of the impartial medical
70 examiner shall be admitted into evidence at the hearing. Either party shall have the right to
71 engage the impartial medical examiner to be deposed for purposes of cross examination. "